

Tennessee Ethics Commission
Minutes of September 27, 2007

In the absence of Chairman Garland, Commissioner Hall presided and called the meeting to order at 8:10 a.m. Present were Commissioners Hall, Neal, Purser and Knight. Commissioners Garland and Brown were absent.

Commissioner Hall stated that the first portion of the meeting would be the Rule Making Hearing and would be conducted by Anne Turner, Legal Counsel.

The first rule presented was Chapter 0580-1-1, Amendments to the Rules Pertaining to Lobbyists and Employers of Lobbyists. This rule pertains to waivers of registration fees and waivers of lobbyist training fees.

The next rule presented was Chapter 0580-1-2, Access to Public Records of the Tennessee Ethics Commission. This rule pertains to procedures for accessing, inspecting, copying and related fees of records of the Commission.

Ms. Turner explained the procedures for both rules. The records would be kept open for 10 days for written comments and the comments would be forwarded to the Commission for approval. Final rules would be submitted to the Attorney General's office for approval and then filed with the Secretary of State. She asked for public comments after presentation of each rule and there were none. Commissioner Knight asked if written comments could be submitted electronically. Ms. Turner responded that comments could be submitted by regular mail, fax or email.

The public hearing on the Rule Making portion was concluded.

Commissioner Hall called the regular meeting to order at 8:15 a.m.

The first item on the agenda was approval of the June 27 and 28, 2007, and the August 9, 2007 minutes.

Commissioner Neal asked that the minutes reflect the changes and that the minutes posted on the website reflect those changes. Commissioner Knight presented written comments that should be in the June 27 minutes.

Commissioner Hall asked if there was a motion to approve the June 27 minutes as amended. Commissioner Knight made the motion and Commissioner Neal seconded. The minutes, as amended, were approved unanimously.

The Commission next considered the minutes of June 28. Commissioner Neal stated that the minutes should reflect her statement about the length and accuracy of the minutes, not just length. Commissioner Neal presented written comments to the June 28 minutes. Commissioner Purser made a motion to adopt the minutes, as amended, and Commissioner Knight seconded. The motion was approved unanimously.

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The August 9 minutes were discussed. Commissioner Knight made the motion to adopt the minutes, as amended, and Commissioner Neal seconded. Motion passed unanimously.

Bruce Androphy presented the Executive Director's report. Mr. Androphy provided budget information to the Commission. Mr. Androphy requested authorization to increase the General Counsel's salary using monies left over from surplus lobbyist funds since the General Counsel spends at least half time on lobbyist activities. The second request was to cover the cost of the new Ilobby electronic filing system with surplus lobbyist funds.

Commissioner Pursuer made the motion to approve the increase in General Counsel salary. Commissioner Neal seconded and the motion was approved unanimously.

Discussion commenced on the second request to fund the Ilobby system. Mr. Androphy assured the Commission that the financial disclosure forms online system is not covered under this request, but that the requested funding is strictly for Ilobby. Commissioner Purser made the motion to approve the funding request for the Ilobby system and Commissioner Knight seconded. Motion approved unanimously.

Mr. Androphy explained that the General Assembly changed the registration date for lobbyists and employers of lobbyists from October 1 to January 1. Commissioner Neal asked if the Commission would reset the registration date for lobbyists and employers of lobbyists and call it a grace period. Commissioner Knight moved that any registration required by the engagement of a lobbyist on or after October 1, be considered as having been made for the 2008 year so that registration on or after January 1 would not be required. Commissioner Neal seconded the motion and the motion carried unanimously.

Mr. Androphy requested permission to post lobbyists' names on the TEC website of those lobbyists who have not attended lobbyist training. Commissioner Purser made the motion to post the names on the website and Commissioner Neal seconded. Motion passed unanimously.

Commissioner Knight discussed the feedback from the lobbyist training session regarding the fee for the training. She asked if more was charged than what was needed to cover the cost of the training and, if so, why not rebate some of the fee back to the lobbyists. Mr. Androphy explained that staff is working on the costs to produce the training and that the biggest expense was staff time. Commissioner Neal stated that the Commission was asked to consider the per hour fee of CLE is, so that if our costs were out of line with that, the Commission could justify why the fees were out of line. Commissioner Hall stated that Mr. Androphy would bring this information back and Mr. Androphy said he would wait until the end of the year after one more training session.

Commissioner Knight stated that she would like to see the feedback for all training (state officials). Mr. Androphy stated that we did not conduct a survey for other training and Commission Knight requested that staff do that with all training.

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The Commission next considered training waiver requests from lobbyists. Commissioner Neal asked if the staff was recommending a policy for the Commission to observe in determination of the waiver requests. There being none, Commissioner Purser and Commissioner Knight cited the statutory requirement and Commissioner Purser made the motion to not grant any waivers; Commissioner Hall seconded and the motion passed unanimously.

Mr. Androphy sought permission to post on the website names of local officials who had not filed disclosure of interests statements as authorized by the statute.

Mr. Androphy sought permission to post names of government agencies that have filed Code of Ethics with the Commission. Commissioner Purser made the motion and Commissioner Knight seconded. Motion passed unanimously.

Barry Woody was introduced to the Commission as the newly hired Ethics Compliance Officer. Commissioner Neal asked Mr. Androphy to remind the Commission of the duties and responsibilities of this position and Mr. Androphy responded. The Commission welcomed Mr. Woody.

The Commission next discussed the search for a new General Counsel since Ms. Turner will be leaving. Commissioner Neal expressed her opinion that the commissioners be more involved in the hiring process because the position of General Counsel is critical to the Commission. Commissioner Neal reminded the Commission that at first, the title was Counsel to the Executive Director. She stated that the change of title was more form than substance and this position should follow more closely with those of other state agencies. Mr. Androphy explained that the Secretary of State's personnel office will help with collecting resumes and writing samples. Mr. Androphy stated that he would work with the Commissioners for scheduling purposes if they chose to participate in the interview process. Commissioner Purser stated that when two commissioners gather, it becomes an open meetings issue. Commissioner Knight suggested that the Commission follow a similar process they used when they chose an executive director. The decision was made to post the vacancy as soon as possible with several organizations.

The Commission discussed disclosure of interests statements and the request to add spouse's name and county to the disclosure form. The Commission decided not to add the spouse's name because it is not statutorily required, but deemed it proper to ask for the county name.

Mr. Androphy reported that ads have been placed for our lease and bids are due back by October 17. Our current landlord did receive the RFP and will respond.

Mr. Androphy announced that the joint legislative committee to study the ethics reform act will meet on October 24. He said that at some point the Commission may want to consider recommendations to present to the committee.

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Old Business

The first item of old business considered was the draft complaint proceedings rules. Ms. Turner provided the Commission with a flow chart of procedures. Ms. Turner explained that the flow chart is meant to divide those situations which require case hearings and those which do not. Commissioner Knight said she would like to see a redraft of the rules. There was no motion to approve and the Commission asked for a redraft of the rules. Commissioners Neal and Knight provided written questions and comments to the rules for redrafting.

Next item under Old Business was the Draft Rules Pertaining to Administrative Sanctions. After discussion, the Commission asked for a redraft of this rule. Commissioners Neal and Knight provided written questions and comments to the rules for redrafting.

The Commission considered draft advisory opinion 07-03 (Campaign Contributions by Lobbyists who are also officers in political action committees). Staff presented the Commission with two versions. One version opined that the lobbyist acting as an official of the PAC could not make the contribution. The other version opined that the lobbyist could make a contribution as an official of a PAC because that would be a ministerial action. Commissioner Knight stated that she agreed with the version that the lobbyist could make the contribution, but not with the rationale of the opinion. She stated that it was the entity that makes the contribution, not the person signing the check.

Commissioner Hall recognized Courtney Pearre, president of the TLA. Mr. Pearre stated that he agreed with Commissioner Knight.

Commissioner Hall then recognized Alan Ramsaur, Ex. Dir. of the TBA. Mr. Ramsaur also agreed with Commissioner Knight, suggesting that the ministerial act definition is not used in this code section and that there may be a jurisdictional question between the Commission and the Registry of Election Finance.

Commissioner Hall explained that the Commission had before them Advisory Opinion 07-03, staff versions 1 and 2 and that Commissioner Knight had presented version 3. Commissioner Knight made the motion to adopt version 3; Commissioner Neal seconded. The vote to adopt version 3 was 3-1 with Commissioner Purser voting no.

Draft advisory opinion 07-07 (whether an employer of lobbyists may pay for out-of-state travel expenses for a state official to attend a national convention) was next considered. Commissioner Purser moved for the adoption of the opinion in its entirety with one modification, which would be to delete or edit the first answer, the non-responsive one on the bottom of page one. Commissioner Neal seconded. Commissioner Knight proposed an amendment that would (1) allow for further clarification of question 6 and (2) allow her to work with staff on edits she proposed. Commissioner Pursuer made the motion to

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accept the amendment and Commissioner Neal seconded. The vote was unanimous to accept Commissioner Knight's amendment.

Draft advisory opinion 07-08 (whether a state official while serving as a board member in a professional organization, may solicit contributions from employers of lobbyists to benefit all members of the organization) was considered. After discussion, Commissioner Hall recognized Greg Cothron, State Audit, Comptroller's office, and Ann Collett, a member of the Association of Government Accountants, for comments. After discussion, Commissioner Hall made the motion to adopt the advisory opinion as written. Commissioner Purser seconded. Commissioner Knight stated that she had edits and offered an amendment to accept these edits. Commissioner Hall accepted. Commissioner Hall asked for a vote on adoption of the motion. The motion to approve 07-08 did not carry and was deferred to next meeting.

The Commission next considered New Business.

The Public Records Request/Attorney General Memorandum was discussed. Commissioner Neal made the motion to release the "Private and Confidential" Attorney General Memorandum based on the waiver of the Commissioner's attorney client privilege by the Executive Director; Commissioner Knight seconded and the motion carried unanimously.

Draft Advisory Opinion 07-10 (whether an individual who arranges introductory meetings for clients with state officials must register as a lobbyist) was next discussed. After discussion and editing, motion was made by Commissioner Knight to approve 07-10; Commissioner Neal seconded and the motion carried unanimously.

Draft Advisory Opinion 07-11 (solicitations by state employees) was considered. Commissioner Knight moved that 07-11 be revised and that the Commission work on the revision at the next meeting. Commissioner Neal seconded the motion. The motion was approved unanimously.

The Commission next considered the Audit Reports. Allegra Walker discussed the audits conducted by staff and Mr. Androphy discussed the procedures used. One audit report was voluntarily amended by the filer, but not because the report was not compliant. Commissioner Hall recognized Mark Greene, who stated that the audits were conducted in a courteous, professional manner and expressed confidence in the manner in which the audits were conducted. Commissioner Purser made the motion to accept the audit report and Commissioner Knight seconded. Motion passed unanimously.

The draft Regulations on Gifts Based on Close Personal Friendship was the next item on the agenda. Commissioner Knight moved that consideration of this be deferred until the Commission has fully adopted complaint procedures. Commissioner Neal seconded. Motion passed unanimously.

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The Attorney General Report on Referral of Compliant was deferred until the complaint rules are effective.

The Commission voted that they should be apprised of all fee waiver requests before any response is given or any action is taken. The Commission agreed to poll all members for the next Commission meeting, keeping in mind that the legislative study committee would meet October 24. The week of October 22 was proposed with October 23 being the preferred date. Commissioner Hall proposed October 29 as an alternative date.

With there being no further business, the meeting adjourned at 3:25 p.m.

Respectfully submitted,

Becky Bradley